

## **SECTIONAL ANALYSIS**

The purposes of this bill are to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (the Act) for the period from FY 2006 to FY 2010, and to make needed improvements in five areas: (1) fisheries ecosystems, (2) dedicated access privilege programs, (3) Secretarial authorities and actions, (4) access to and use of scientific information and other social-economic and permit data used for management purposes, and (5) fisheries law enforcement. First, this bill encourages ecosystem approaches to management, authorizes the development of fishery ecosystem plans, and revises provisions relating to habitat designations. Second, the bill authorizes dedicated access privileges. Third, the bill specifies the roles of the Secretary of Commerce in certain categories of fisheries management actions, in particular determinations of cost-effectiveness, approval of plans and regulations, and emergencies. Fourth, the bill strengthens fisheries management through programs that will generate improved scientific advice and observer data, more comprehensive social and economic information, and permit databases. Fifth, the bill promotes the more effective enforcement of, and therefore compliance with, fisheries laws and regulations through a number of changes in enforcement provisions.

### **SECTION 1.           SHORT TITLE**

This section states that the short title for the bill is the "Fishery Conservation and Management Amendments of 2005.

### **SECTION 2.           AMENDMENT OF MAGNUSON-STEVEN'S FISHERY CONSERVATION AND MANAGEMENT ACT**

This section notes that this bill amends the Magnuson-Stevens Fishery Conservation and Management Act.

### **SECTION 3.           DEFINITIONS**

This section changes existing definitions and adds some new terms to give more precision to the language that directs management actions. There are 13 modified and new terms: "bycatch", "confidential information", "Continental Shelf Fishery Resources", "depleted", "ecosystem", "exclusive economic zone boundary", "foreign law", "habitat area of particular concern", "import", "observer information", "optimum", "overfishing" and "United States citizen".

This section modifies definitions of five terms that are already defined in Section 3. The changes to the definition of "bycatch" are designed, first, to extend the term "bycatch" to include incidentally taken seabirds, in addition to fish, and, second, to specify that the exemption applies to all fish caught and released alive by recreational fishermen, not just those caught as part of a

recreational catch and release fishery management program. The modified definition of bycatch will require amendments to fishery management plans submitted by the Councils no later than 24 months after the enactment of this bill. Changes to the term “Continental Shelf Fishery Resources” add five new species to the existing list of 31 corals, crabs, lobsters, abalone, clams, conches, and sponges that already have this designation. The modified definition of "exclusive economic zone boundary" clarifies how the boundary of the exclusive economic zone (EEZ) is determined under the Act for U.S. commonwealths, territories, and possessions. The changes to the Act’s definition of “optimum” specify that scientific uncertainty is an important consideration in setting the optimum yield. The term “overfishing” has been revised to make clear that the definition applies solely to “overfishing” and not, as under current law, to “overfishing” and “overfished”. As indicated below, the term "overfished" has been replaced with a separate definition of "depleted" to reflect the fact that factors other than fishing may contribute to the depressed condition of a fishery.

This section adds eight new terms: “confidential information”, “depleted”, “ecosystem”, “foreign law”, “habitat area of particular concern”, “import”, “observer information”, and “United States citizen”. The term “confidential information” is defined to facilitate administration of information collection programs under section 402 of the Act, and to protect legitimate business interests. The term "depleted" replaces “overfished” (and, therefore, also requires the change to the term “overfishing” discussed above). This new term is needed because the existing term "overfishing" refers to a level of fishing mortality, and not the status of the stock. In addition, “depleted” is preferable to “overfished” because a fishery may be depleted for reasons other than overfishing. For example, under the current definitions, it is possible that a fishery be overfished without being subjected to overfishing. Conversely, there may be overfishing in a healthy fishery. Therefore, the new term “depleted” will create a statutory distinction within the Act between the state of being depleted and the act of overfishing. The term “ecosystem” is defined to give formal status to the emphasis on ecosystem approaches to management that informs several provisions of this bill and to stress that people are an integral part of the ecosystem. The terms “foreign law” and “import” are added to facilitate enforcement of violations of fishery laws and regulations. The term “habitat area of particular concern” is added to enable Councils and the Secretary to more effectively address habitat issues in specific areas that are subsets of essential fish habitat. “Observer information” is defined to formally encompass and identify a broad range of information that is used for scientific assessment and fisheries law enforcement purposes. The definition of “United States citizen” will help in resolving the issue of corporate ownership of shares in individual fishing quota and other dedicated access privilege programs.

#### **SECTION 4. FISHERIES ECOSYSTEMS**

This section (1) modifies the Act in several places to facilitate, encourage and promote ecosystem approaches to fisheries management, (2) provides for the designation of habitat areas of particular concern “as discrete subunits of essential fish habitat”, and (3) authorizes the Councils or Secretary to prepare fishery ecosystem plans. The major purposes of these

provisions are to encourage the Councils to take into account ecosystem-related considerations in the management process; to authorize, the preparation of fishery ecosystem plans; to allow for the adoption of conservation and management measures specifically to protect the ecosystem and to give the Councils added flexibility in targeting habitat-related actions within essential fish habitat.

First, this section amends the Act's statement of findings, purposes and policy to affirm the importance of ecosystems and ecosystem-related objectives. Accordingly, this section notes that "ecosystems associated with fisheries are valuable natural resources, and calls for actions and policies "to protect the ecosystems associated with those fishery resources". In addition, one purpose of the Act is "to promote the health and productivity of fishery ecosystems".

Second, a new term, "ecosystem", is added to the Act's list of definitions [See Section 3 of this bill].

Third, a new provision is added to section 303(b) that authorizes Councils, when preparing fishery management plans, to "incorporate conservation and management measures necessary to protect and enhance the health and productivity of marine ecosystems". Another addition to the Section 303(b) discretionary provisions of fishery management plans authorizes the identification of habitat areas of particular concern as subunits of essential fish habitat.

Fourth, a new section 303(e) is added that directs the Secretary to prepare guidance "concerning ecosystem considerations in fishery conservation and management" and authorizes the Councils or the Secretary, as appropriate, to prepare fishery ecosystem plans to assist in implementing an ecosystem approach to managing fisheries. The new section 303(e) also specifies that fishery ecosystem plans may include (1) measures to avoid and minimize adverse effects of fishing on fish habitat, (2) marine managed areas in the exclusive economic zone or on the high seas and (3) management of fishing capacity. A new section 303(c) is also added allowing the Councils to recommend regulations to the Secretary in order to implement a fishery ecosystem plan.

Fifth, section 303(a)(7) and 305(b)(4)(A) are modified so that priority conservation measures can be focused on habitat areas of particular concern.

## **SECTION 5. REBUILDING FISHERIES**

This section amends several provisions of the Act, including the Section 2 Findings and Section 301 National Standards to conform to the definitional changes discussed in Section 3. The most substantive changes amend the rebuilding provisions in section 304 to: (1) place greater emphasis on controls of fishing mortality and (2) re-state fishery rebuilding requirements that more appropriately respond to the scientific facts of the recovering fisheries. Finally, this section replaces the annual report to Congress on the status of fisheries with a more broadly available list

of fisheries that are depleted, approaching a condition of being depleted, or are subject to overfishing.

The major purpose of these changes is to modify the rebuilding provisions so that mandatory actions better reflect the capabilities of the Councils and the Secretary, and rebuilding goals and timetables adequately take into account the unique features of different federally managed fisheries. Thus, the modified section is focused on rebuilding depleted fisheries regardless of the cause of depletion rather than just rebuilding fisheries that have been depleted by overfishing. To signal this shift in emphasis, section 304(e) of the Act is amended with a new title, “Rebuilding Fisheries”, instead of “Rebuilding Overfished Fisheries”.

Under the current statute, overfishing is allowed to continue on a depleted fishery as long as the fishery can be rebuilt within the rebuilding timeframes. This section amends the Act to require the preparation of fishery management plans or amendments to eliminate overfishing as soon as possible but no later than two years. This provision will end overfishing at a time certain on a number of chronically overfished stocks. The current law contains a complicated formula for setting rebuilding timeframes. Rebuilding is to occur as soon as possible taking into account a number of factors but not to exceed 10 years unless the biology of the stock and certain other factors would prevent rebuilding within 10 years. The modified section would replace this complicated two-step formula with a single formula based on the biology of the stock. In place of the 10-year requirement, rebuilding plans shall “specify a timeframe for rebuilding depleted [rather than overfished] stocks to a level that can sustain maximum sustainable yield, not to exceed the expected time to rebuild absent any fishing mortality under prevailing ecological and environmental conditions, plus the generation time of the stock”. This adjustment in rebuilding time frames is consistent with the recently proposed revised guidelines to implement National Standard 1.

## **SECTION 6. SCIENCE SUPPORT FOR FISHERIES CONSERVATION AND MANAGEMENT**

This section amends a number of the Act’s provisions relating to the collection and use of scientific, socio-economic and permitting information that is used for fishery management purposes. With respect to fisheries science, this section addresses concerns about the Councils’ use of scientific information by (1) requiring formalized peer review of science used by the Councils; (2) creating a national data collection program to ensure uniform standards and treatment of data; and (3) broadening the incentives for qualified scientists to join Scientific and Statistical Committees. The collection of information is addressed through provisions relating to observer programs, commercial permit and recreational registration programs, and the scope and range of economic data used in fishery management plans. In addition, this section modifies the provisions that apply to the sharing of certain categories of information, including confidential information.

Scientific Information: This section revises the Act to require a formalized peer review process for scientific information used by the Councils as a basis for fisheries management decisions. The Act also would authorize the payment of stipends of members of the Scientific and Statistical Committee, provided they are not employees of the federal government or a state marine fisheries agency.

National Data Collection System: The Act is amended to direct the Secretary to establish a national data collection system to "assess and specify the nature and extent of scientific data, including observer data, needed for effective implementation of fishery management plans and fishery ecosystem plans". This provision will facilitate the collection and disposition of certain types of information by the Secretary for the purpose of improving the regulatory analyses in support of fisheries management. Individual fishery management plans must be consistent with the national data collection system although the Councils are given the flexibility to request additional information collections specific to the fisheries under their jurisdiction. The national data collection system would replace the various "standardized" bycatch reporting methodologies in the individual fishery management plans with a national standardized bycatch reporting methodology.

The Secretary is also authorized to collect from any person applying for a commercial fishing permit [See section 17: Fishery Permitting and Registration]: a single permit identifier (either a Social Security number and date of birth or taxpayer identification number). This provision will facilitate an accurate count of permit holders for Congressional reports, testimony, budget initiatives, and for cross-regional economic analyses, as well as strengthen the national coordination of permit programs. This authority will also enable the Secretary to verify the uniqueness of an individual or business entity that is a permit owner or holder, which is particularly important in dedicated access privilege and fishing capacity reduction programs. Due to confidentiality concerns, the social security number, taxpayer identification number, and date of birth will not be placed on the permit.

Sharing of Information: The Act currently precludes the sharing of information submitted to the Secretary under the Act except in specific circumstances. This amendment clarifies that Federal employees involved in fishery management plan enforcement may have access to this information. This amendment also places further restrictions on sharing information with State or Marine Fisheries Commission employees such that the information can only be shared if the Secretary has determined that the disclosure is necessary to further the Department's mission to conserve and manage fisheries. Recent efforts to increase the role of the States in enforcing the Act and other Federal fishery laws have been hindered by the existing law, which limits the Secretary's authority to disclose confidential information to State employees. This amendment authorizes the Secretary to disclose that information to State employees who are responsible for fishery management plan enforcement as long as they are employees of States that have entered into a fishery enforcement agreement. The amendment broadens the existing provision allowing disclosure to "verify catch under an individual fishing quota program" to apply to all limited

access program determinations in order to improve the transparency of the Secretary's decision in these matters. The amendment will also allow for the disclosure to State, Council, or Marine Fisheries Commission employees involved in catch verification under limited access programs. Finally, this section authorizes the disclosure of information in support of national and homeland security activities, including the Coast Guard's homeland security missions. The provision provides specific statutory reference (6 USC 468(a)(2)) to clarify the meaning of the term "homeland security", which has not been previously defined in the Act.

Socio-Economic Information: This section also amends the Act to expand the categories of economic data that may be required by Councils in a fishery management plan, better enabling the Secretary and the Councils to conduct regulatory assessments that comprehensively evaluate the social and economic impacts of management measures. Accordingly, a fishery management plan may include information on harvest and processing revenues (by species), production costs, capital expenditures, and other fishing or processing costs. Other amendments increase the categories of information the Secretary may collect at the Councils' request. In particular, this amendment eliminates current language in the Act that precludes the Secretary from collecting commercial or financial information regarding fishing operations or fish processing operations. This change will make it easier for the Secretary and the Councils to prepare adequate analyses and regulatory assessments of the impacts of conservation and management measures on all aspects of fishing communities. Finally, the Act is amended to provide access to processors' economic information, better enabling the Secretary and the Councils to assess the shore-side economic impacts of management measures.

## **SECTION 7. APPOINTMENTS OF REGIONAL FISHERY COUNCIL MEMBERS**

In conformity with the commitment in the Administration's December 2004 U.S. Ocean Action Plan, this section is designed to ensure that Council voting members represent a balanced apportionment of marine interests in their respective States. The qualifications for Council voting members are amended to include "knowledge of the ecosystems that support fisheries" and a "commitment to sustainable fisheries" in order to broaden the pool of individuals qualified to be Council members. In addition, this section of the Act is amended to require the Secretary, in his efforts to ensure a fair and balanced apportionment, to appoint Council members who represent "other individuals who are concerned with the conservation and management of the fishery resources and marine ecosystems in which the fisheries are conducted", in addition to active participants (or their representatives) in the commercial and recreational fisheries. To ensure a transparent selection process, this section also directs the Governors to "publish a solicitation notice" for nominees for the Councils. Finally, in the event that a Governor submits unqualified candidates or a slate of nominees that do not adequately represent "the breadth and diversity of fisheries and their ecosystems within the State", this section authorizes the Secretary to notify the appropriate Governor of that determination.

## **SECTION 8. COUNCIL COORDINATION COMMITTEE**

This section establishes a Council Coordination Committee (of Chairs, Vice Chairs, Executive Directors and Council staff) in order to allow the Councils to coordinate on issues relevant to all Councils, including those related to implementation of the Act. The Act currently provides that the Federal Advisory Committee Act "shall not apply" to the Councils. This section would make clear that the Council Coordination Committee and joint efforts by Councils and Federal employees may also hold meetings that are not subject to the provisions of the Federal Advisory Committee Act.

## **SECTION 9. MONITORING OF PACIFIC INSULAR AREA FISHERIES**

This section amends provisions of the Act that provide for observer coverage of foreign fishing under a Pacific Insular Area fishery agreement. The amendments to sections 201 and 204 provide that foreign fishing under such an agreement may be monitored by any program that the Secretary determines is adequate to monitor harvest, bycatch, and compliance with U.S. laws. The existing law appears to require 100 percent observer coverage in these fisheries, and some foreign nations have expressed concern over the high cost of maintaining that level of coverage. The observer costs are passed on to the insular area governments in reduced revenues from the agreements. The changes made under this section recognize that automated vessel monitoring systems have become a valuable tool that can effectively complement an observer program, thus enabling the foreign fishing to be monitored successfully at a lower cost.

## **SECTION 10. CARIBBEAN COUNCIL JURISDICTION**

This section amends section 302(a) of the Act to expand the Caribbean Fishery Management Council's jurisdiction. Current law gives the Council jurisdiction over the fisheries seaward of the Virgin Islands and Puerto Rico. The amendment under this section extends the Council's jurisdiction to the other possessions in the Caribbean. This will enable the Council to address the conservation of coral reefs, reef fish, queen conch, and spiny lobsters in areas not now under its jurisdiction.

## **SECTION 11. NOTICE OF COUNCIL MEETINGS**

This section amends the Act to give the Councils greater flexibility in notifying the public of the times of regular and emergency meetings, and in providing notice of closed meetings. The current law requires these notices to be published in local newspapers in the major fishing ports of the affected region. The amendments under this section relieve the Councils of the burden of publishing notices in the local newspapers, which is more expensive and less effective in reaching target audiences than e-mails, public service announcements, and notices included in marine weather forecasts. These amendments will permit the Councils to use any means of notification that will result in wide publicity.

## **SECTION 12. DEDICATED ACCESS PRIVILEGES**

In conformity with the December 17, 2004 U.S. Ocean Action Plan, this section promotes "greater use of market-based systems for fisheries management". This section addresses dedicated access privileges (DAP), a term that includes programs such as: (1) individual fishing quotas, (2) community quotas, (3) fishing cooperatives established pursuant to the Fishermen's Collective Marketing Act of 1934, and (4) area-based quotas. These DAP programs are designed to end the derby "race to fish", reduce overcapacity, and improve the economic and environmental performance of the DAP-managed fishery. The major purpose of this section is to give the Councils as much flexibility as possible, within reasonable constraints of national policy, to design DAP programs for Secretarial approval that meet the diverse needs of the program participants.

This section builds on the limited access program and individual fishing quota provisions in the current Act in order to authorize DAP programs. Standards and guidelines for DAP programs are specified with respect to allocations and transfers, and cost recovery. Section 303(d) would be amended to broaden its application to allow flexibility to design DAP programs that will contribute to improved economic performance in the fishery. The section would require fair and reasonable procedures for the initial allocations of privileges in a DAP program and inclusion of measures to assist entry-level and small-scale fishermen, captains and crew to participate in the program. The section would require that the DAP program prevent individual privilege holders from acquiring excessive shares of privileges and provide for the transfer and tracking of privileges. The section would also require that the program contain measures to recover the cost of implementing the program on the Federal government.

The section would also amend the fee provisions in Section 304(d) to mandate the recovery of implementation, operation, and administrative costs in all programs including DAP programs. For DAP programs specifically, revenue will be generated to cover the costs by reserving and auctioning a share of the privileges.

Community quota programs, under current law, exist only in western Alaska and the western Pacific. This section would make community quota programs available in all regions. These community sustainability programs have to meet criteria developed by a Council and approved by the Secretary, and must prepare and submit a Community Sustainability Plan.

## **SECTION 13. ACTION BY THE SECRETARY**

This section amends Sections 303, 304, and 305 of the Act for several purposes: (1) to require the cost effectiveness of management measures, (2) to clarify the role of the Secretary in approving and implementing management measures, including the review and implementation process for fishery management plans and amendments, and their implementing regulations, and



(3) to authorize mechanisms to streamline the regulatory process integrating various procedural requirements. The underlying purpose of these amendments is to facilitate effective Secretarial actions in the management process.

First, this section adds to the required provisions of fishery management plans a new obligation that such plans contain conservation and management measures that are “cost-effective” considering the administrative cost of implementation and operation of the measure.

Second, this section revises the provisions governing the approval of fishery management plans and plan amendments, and the implementing regulations. The Secretary is required to make a preliminary evaluation of the Council plan or amendment to determine whether it is (1) sufficient in scope and substance to warrant a review and (2) consistent with the national standards, the other provisions of the Act, and other applicable law. If the preliminary evaluation is negative, the amendment allows the Secretary to immediately return it to the Council with guidance on what needs to be corrected. This provision will save valuable time since current provisions require the Secretary to wait until after the 60-day comment period to disapprove a proposed action. If the preliminary evaluation is positive, the Secretary must publish a notice of availability of the plan or amendment, and the proposed implementing regulations, in the Federal Register within 15 days of the preliminary evaluation of the plan or amendment. The comment period is required to be 50 days.

Where a Council submits proposed regulations simultaneously with a plan or amendment, the Secretary is required to promulgate the final regulations within 45 days after the end of the comment period. However, where the Council submits the proposed regulations after approval of the plan or amendment, the comment period for those regulations is required to be 15-60 days. These changes are intended to ensure that the Secretary is not required to make a decision on a Council's plan or plan amendment before the end of the comment period for the implementing regulations.

Third, the Act is amended to add the discretionary authority to “develop alternative procedural mechanisms” in lieu of plan amendments for implementing conservation and management measures. For over fifteen years, Councils and the Secretary have used various mechanisms to allow for the implementation of conservation and management measures without going through the formal plan amendment process. This section would formally allow the use of abbreviated procedures in such alternative processes but only where the conservation and management measure under consideration is within the scope of conservation and management measures established in existing plans, where existing regulatory processes are not sufficient to allow for the timely and efficient implementation of the measure in response to new information and where appropriate notice is provided.

In addition, this section extends by six additional days the length of the second emergency regulation or interim measure that may be taken under the Act to respond to an emergency or overfishing in a fishery. This change means that the first 180-day emergency period can be extended with a second emergency period of 186 days, thus enabling emergency management of a fishery over a full 12 months. The most common situation where a full year of emergency management is needed is when a fishery management plan has to be implemented by emergency regulations. This section corrects an error in the existing law related to the early termination under the Act of an interim measure. This section also exempts emergency rules from the prior notice and public comment requirements of the Administrative Procedure Act. Finally, this section clarifies that the Secretary is authorized to issue regulations to interpret and facilitate implementation of this Act.

#### **SECTION 14. JUDICIAL REVIEW OF CERTAIN ACTIONS BY THE SECRETARY**

This section amends the Act to allow litigants to challenge all final agency actions taken by the Secretary under this Act, including the Secretary's decision to approve a fishery management plan or to deny a dedicated access privilege, as long as that challenge is brought within the existing statute of limitations under the Act. In addition, since not all final agency actions are published in the Federal Register, particularly those involving individual permit decisions, the section provides that the statute of limitations will begin to run on the date that the action is published in the Federal Register or otherwise becomes a final agency action. Finally, this section also amends the Act to authorize award of attorneys' fees to prevailing parties.

#### **SECTION 15. EFFICIENT, EFFECTIVE ENVIRONMENTAL IMPACT ASSESSMENTS**

This section directs the Secretary, in consultation with the Councils and the Council on Environmental Quality, to revise and update agency procedures for the assessment of impacts of proposed fishery management actions pursuant to any applicable provisions of the National Environmental Policy Act and applicable law regarding the environmental effects abroad of major federal actions. Revised procedures shall be proposed within 12 months of the enactment of this Act and promulgated no later than 24 months from the date of enactment of this Act. The major purposes of these revised and updated procedures are to provide for timely, clear, and concise analysis that is useful decision maker and the public, reduce extraneous paperwork, and effectively involve the public.

#### **SECTION 16. ENFORCEMENT IMPROVEMENTS**

This section makes several discrete changes to the Act to improve and make more effective the enforcement of fisheries regulations.

First, this section establishes, for purposes of this Act, the seaward boundary of coastal states of the United States, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, and Guam.

Second, this section increases the maximum civil administrative penalty for a violation of the Act to \$240,000. This section would also authorize civil judicial penalties not to exceed \$300,000. This section also increases the Act's criminal penalties for violations involving obstruction of investigations to imprisonment for not more than five years and fines of “not more than \$500,000 for individuals or \$1,000,000 for an organization”. An increase in the maximum penalty available under the Act is justified to provide for an adequate response to the most serious violations. A higher maximum is a necessary enforcement tool to both punish and deter the egregious, large-scale and repeat violators. The possibility of higher penalties will help to ensure that individuals and entities do not view monetary penalties imposed under the Act as merely a cost of doing business.

Third, this section amends section 308 to add a new provision allowing for the imposition of civil judicial penalties. Although the criteria to be used in determining an appropriate penalty amount (including the nature, circumstances, extent and gravity of the violation; any history of prior violations; and the ability of the violator to pay) will apply whether an enforcement proceeding is brought in the civil administrative or civil judicial context, the procedures for such a consideration will differ according to the procedural and evidentiary rules of the form. Any perceived discrepancy in the language used to describe penalty determinations is due to the fact that NOAA's Civil Procedure rules, at 15 CFR Part 904, will be followed in all administrative proceedings and the Federal Rules of Civil Procedure and Federal Rules of Evidence will apply to any proceedings brought in district court.

Fourth, this section amends section 308(f) of the Act to allow the Secretary to use subpoenas in the investigation of alleged violations of the Act and other marine resource laws enforced by the Secretary. Existing law authorizes subpoenas for civil penalty hearings but not for the investigations of alleged violations. This situation deprives the Secretary of the ability to fully investigate alleged violations prior to issuance of a Notice of Violation and Assessment (NOVA) and the alleged violator's request for an administrative hearing. This amendment will ensure that the Secretary has the tools needed to conduct a thorough investigation before the decision to issue a NOVA or assess a penalty.

Fifth, this section amends section 308 of the Act to provide that the transfer of ownership of a permit or any interest in a permit does not extinguish an applicable permit sanction. Current law provides that the transfer of vessel ownership does not extinguish a permit sanction, but does not address situations where permits are issued to persons instead of vessels. This amendment eliminates a loophole in the law where permits are issued to persons. The amendment also requires prior written notice to prospective transferees of the permit or interest regarding any permit sanction that will be in effect or pending at the time of transfer. This section also amends section 304(g) of the Act to clarify that a

permit suspended for nonpayment of any amount in settlement of a civil forfeiture must be reinstated upon payment of that amount, together with interest.

Sixth, this section amends the Prohibited Acts provision of the Act (Section 307) to add three new prohibitions. The section would make it unlawful for any person to "import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any treaty or foreign law." The section would prohibit any type of fishing where the owner had previously been compensated as part of a fishery capacity reduction program under Section 312(b)(2). This section also makes it clear that it is also a violation of the Act to attempt to undertake one of the Prohibited Acts.

Finally, section 16(e) provides an exception to civil forfeiture of fishing vessels violating the Act as a result of any act for which the issuance of a Section 311(c) citation is sufficient sanction. However, this exception would not preclude civil forfeiture of such vessels for violations of the customs laws or applicable federal laws.

## **SECTION 17. FISHERY PERMITTING AND REGISTRATION**

Drawing on the Administration's December 17, 2004 U.S. Ocean Action Plan, this section establishes (1) a national permit program for commercial fishermen and (2) a national registration program for recreational fishermen. The common purpose of these two provisions is to establish programs that will create a nationally coordinated database of information on commercial and recreational resource users. These proposals carry forward the work that Congress mandated in 1996 on the Standardized Fishing Vessel Registration and Information Management System.

First, this section directs the Secretary to establish a national program for permitting in commercial fisheries, effectively moving the authority for commercial fishing permits from section 303(b), where it is currently a discretionary Council function, to section 304, where it will be a Secretarial requirement. [See Section 6 of this bill, which authorizes the Secretary to collect permit identifier information from applicants for commercial fishing permits.]

Second, this section amends the Act to require the Secretary to establish and implement a uniform national program for registration of recreational fishermen, with exemptions allowed for recreational fishermen already registered in a qualifying State program.

## **SECTION 18. FISHING CAPACITY REDUCTION PROGRAM**

This section amends section 312(b)-(e) of the Act to improve the effectiveness of fishing capacity reduction programs (buyback programs). Buyback programs can help reduce harvesting capacity to biologically and economically sustainable levels, at little taxpayer cost. They can also help lay the foundation for other management measures, such as IFQs, cooperatives, permit stacking, or other capacity-reducing devices. Under the new

provisions, a broad framework regulation would control aspects that are common to all buyback programs; additional, program-specific regulations would address the particular details of each fishery, as necessary. If a particular buyback program were to be industry-funded, a referendum of participants in the fishery would be required.

#### **SECTION 19. FUNDING FOR FISHERY OBSERVER PROGRAMS**

This section amends the Act to address the funding of observer programs and is intended primarily to establish an observer funding program that provides national guidelines but also incorporates sufficient flexibility to meet the unique needs of different regions. Accordingly, the Secretary may establish an observer funding mechanism to cover the cost of an observer program. With a few exceptions, private contractual arrangements between fishermen and non-government observers may not be established. Existing private contracts shall be evaluated by an independent peer review established by the Secretary to evaluate accuracy, precision, and potential biases in the program. The details of observer funding mechanisms should be tailored flexibly to the circumstances of the fishery. Notably, monies deposited in the Fishery Observer Fund must be used for that observer program.

#### **SECTION 20. WESTERN PACIFIC FISHERY DEMONSTRATION PROJECTS**

This section makes a technical amendment to section 111 of the Sustainable Fisheries Act to clarify that Western Pacific communities with indigenous inhabitants are eligible for fishery demonstration projects under that section, even if those communities have not developed and submitted a community development program under section 305(i)(2)(B)(v) of the Act to provide fisheries access to indigenous communities.

#### **SECTION 21. AMENDMENTS TO NORTHERN PACIFIC HALIBUT ACT**

This section amends the Northern Pacific Halibut Act of 1982 to increase the maximum civil penalty to \$200,000 and to authorize permit sanctions under that Act. The new permit sanction authorization is modeled on the permit sanction regime under section 308(g) of the Act. This section also amends section 9 of that Act to increase the maximum fines to \$200,000 for a fishing violation under that Act and to \$400,000 for using a dangerous weapon in committing a fishing violation, engaging in conduct that causes bodily injury to an enforcement officer, or placing an enforcement officer in fear of imminent bodily harm.

#### **SECTION 22. MAINE POCKET WATERS**

This section corrects the coordinates in section 809 of the Atlantic Coastal Fisheries Cooperative Management Act for the waters known as "Maine pocket waters." That Act was amended in 1996 to exempt Maine commercial lobster permit holders from Federal permitting requirements in Maine pocket waters.

### **SECTION 23. SPECIAL AREAS**

This section eliminates the now redundant term "special areas" added by section 301(b) of the Act entitled "An Act to provide for the designation of the Flower Garden Banks National Marine Sanctuary", approved March 9, 1992 (Public Law No. 102-251; 106 Stat. 62).

### **SECTION 24. AUTHORIZATION APPROPRIATIONS**

This section provides authorized appropriations of \$328,004,000 for fiscal year 2006, the President's request, and such sums as may be necessary for fiscal years 2007-2010.